

SUMMARY ANALYSIS OF AMENDED BILL

Author: DeVore Analyst: Deborah Barrett Bill Number: AB 689
 Related Bills: See Prior Analysis Telephone: 845-4301 Amended Date: April 16, 2007
 Attorney: Daniel Biedler Sponsor: _____

SUBJECT: Employer Hiring Credit/Employers Verify New Employee's Social Security Numbers And Report Annually To EDD/Employment Verification Act of 2007

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

X AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

X AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 21, 2007.

X FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 21, 2007, STILL APPLIES.

OTHER – See comments below.

SUMMARY

This bill would do the following:

- require employers to verify the Social Security Number (SSN) for each employee hired
- assess a penalty for noncompliance, and
- allow a tax credit for each SSN verified.

SUMMARY OF AMENDMENTS

The April 16, 2007, amendments revised provisions that originally required reports to be submitted to the Franchise Tax Board (FTB) to instead require these reports to go to EDD. The April 16, 2007, amendments would also reduce the credit and penalty amounts and would establish an additional penalty for fraudulent submission of verified SSNs. "Policy Concerns" identified in the department's analysis of the bill as introduced on February 21, 2007, are unresolved and have been restated below in this analysis, along with new implementation issues created by the new amendments. The "This Bill," "Fiscal Impact," and the "Revenue Estimate" discussions have been revised to incorporate the April 16, 2007, amendments. The remainder of the department's analysis of the bill as introduced on February 21, 2007, still applies.

Board Position:

_____ S _____ NA _____ NP
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 _____ N _____ OUA _____ X PENDING

Legislative Director

Date

Brian Putler

5/1/07

POSITION

Pending.

THIS BILL

This bill would require employers to verify the SSN of new employees within 30 days of hiring that employee by utilizing the Social Security Administration (SSA) Verification Service. Employers would be required to disclose on the Quarterly Wage Report filed with Employee Development Department (EDD) each employee whose SSN has been verified. The bill would provide that FTB will establish the appropriate procedures and forms with respect to the submission of this information and enforcement of the bill's provisions.

EDD would conduct periodic audits for compliance with the requirements of this bill. An employer would be subject to a quarterly fine of \$20 for each employee for which documentation is not provided. An employer who fraudulently checks the box on the quarterly wage report that an SSN was validated would be subject to a fine of up to \$10,000. An employer would be required to verify the SSN of an employee only one time.

This bill would allow a \$5 income tax credit to the employer for each employee hired for whom the employer provides EDD with a valid SSN, as verified by the SSA Verification Service. If the tax credit allowed under this bill exceeds the tax for taxpayers subject to tax under Part 10 of the Revenue and Taxation Code (R&TC), or the net tax for taxpayers subject to tax under Part 11 of the R&TC, the excess may be carried over to reduce the tax or net tax in the following or succeeding years, until the credit is exhausted.

IMPLEMENTATION CONSIDERATIONS

This bill would establish requirements under the R&TC for EDD to administer and audit the reporting of verified SSNs. Employment related requirements, and EDD's authority to administer those requirements, are normally contained within the Unemployment Insurance Code (UIC). To prevent any unintended consequences, it is recommended that the requirements relating to the Quarterly Wage report be moved to the UIC.

This bill would require FTB to develop procedures, forms, and enforcement of provisions that EDD would perform. FTB lacks the authority to direct EDD's activities, nor does FTB have the expertise to establish procedures for EDD. It is recommended that the procedures, forms, and enforcement strategies for this bill's provisions as it impacts EDD be developed by EDD.

The \$10,000 penalty would be applicable in instances where an employer fraudulently checks the box that the SSN has been verified and the \$20 penalty would be applicable for every employee's SSN for which no documentation, or false or fraudulent documentation, is provided. It is not clear which agency would assess either penalty or if the penalty is intended to be applicable to income tax or employment tax. Clarification of the author's intent in this regard would assist in implementing the bill.

The bill would require the Quarterly Wage report to include an indication that the SSN of each employee has been verified, although the bill is only requiring new employees' SSNs to be verified. The author may wish to amend the language to clarify whether the credit or penalty are applicable for all employees or only new employees.

FISCAL IMPACT

Implementing this bill would require changes to existing tax forms and electronic applications to incorporate a new credit. FTB would need to develop a new program to capture and match the employer information that would be provided by EDD to determine the amount of the credit to be claimed. Additionally, until the implementation concerns are resolved, the department would not know the full extent of the impact of this bill on department programs and operations. Any additional costs will be identified and an appropriation requested as the bill moves through the legislative process and the implementation concerns are resolved.

ECONOMIC IMPACT

Based on data and assumptions discussed below, the Personal Income Tax and Corporation Tax revenue impact from this bill would be as follows:

Revenue Analysis for AB 689 – As Amended 4/16/07 Effective And Operative January 1, 2008 Enactment Assumed After June 30, 2007 (\$ in Millions)			
Fiscal Year	2007-08	2008-09	2009-2010
New Employee SSN Verification Credit for Employers	-\$9	-\$37	-\$39

This analysis does not consider any possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

Based on the U.S. Census Bureau's 2005 American Community Survey, there were a total of 12.3 million private wage and salary workers in the state of California (not including undocumented labor). Using the Bureau of Labor Statistics voluntary turnover rate of 23.4% yields approximately 2.9 million potentially SSN-verified new California employees per year (12.3 million x 23.4% turnover rate = 2,878,200).

Data provided by EDD suggests that about 17% of SSN-name combinations that they receive from employers do not match Social Security Administration records. Errors in SSN-name match can result from fraudulent/stolen SSNs or from data entry mistakes. With respect to the later, it is assumed that the proposed credit will cause some employers to clean up their employee data records resulting in improved SSN data quality (assumed 2 percentage points reduction in bad SSN data for 2008).

For 2008, it is assumed that 85% of new hires in CA are determined to have a valid SSN using the SSA verification service (100% new - 17% bad + 2% corrected = 85% valid). Therefore, it is estimated that \$12 million in proposed credits would be generated from resident new employees (2.9M x 85% x \$5 = \$12M). Under this proposal, California taxpayers would also be able to claim a \$5 credit per SSN-verified new hire for employees residing outside of California. This estimate assumes there will be three qualified/verified new employees out-of-state for each qualified in-state new hire. Thus, estimated total credits generated annually, based on the projected number of qualified new employees in 2008 of roughly 9.7 million (2.4M + 7.3M), would be approximately \$50 million per year (9.7 million x \$5). Assuming 65% of all credits generated (\$12M for resident employees plus \$37M for out-of-state employees) are applied in a given year, potential revenue impact would be around \$32 million per year (\$50M x 65%). Revenues reported in the table above have been adjusted to represent fiscal year impacts.

The potential revenue generated from the imposition of penalties authorized by this bill has not been quantified in this analysis because EDD is responsible for administering this provision.

POLICY CONCERNS

This bill allows an unlimited carryover period. Consequently, the department would be required to retain the credit on the tax forms indefinitely. Recent credits have been enacted with a carryover period limitation; experience shows credits are typically exhausted within eight years of being earned.

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of a credit by the Legislature.

This bill would allow a credit for new employees without requiring employment for any specific length of time. Without a requirement for length of employment, the bill could be interpreted to allow the credit where an employee works just one day.

The bill would require employers to verify the SSNs of out-of-state employees and allow employers to claim the credit for those out-of-state employees. The author may want to limit the applicability of this bill to those employees employed or performing services in California. However, adding a requirement based on employment in California may subject the language to constitutional challenge under the Commerce Clause of the United States Constitution.

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